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12 UNITED STATES DISTRICT COURT

13 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

15 UNIVERSAL DELAWARE, INC., et
16 al., on behalf of themselves and all
others similarly situated,

17 Plaintiffs,

18 vs.

19 COMDATA NETWORK, INC., et al.,

20 Defendants.

CASE NO. 2:10-cv-02499-R-RZ

Related to:

CASE NO. 07-1078-JKG-HSP
(consolidated)

In the United States District Court for
the Eastern District of Pennsylvania

**PLAINTIFFS' OPPOSITION TO
DEFENDANT CERIDIAN
CORPORATION'S MOTION TO
QUASH SUBPOENA DUCES
TECUM SERVED UPON UCLA
OFFICE OF RECORD
MANAGEMENT**

[Declaration of Dean M. Harvey filed
concurrently herewith]

Judge: Hon. Manuel L. Real

Date: June 7, 2010

Time: 10:00 AM

Place.: Courtroom A

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Preliminary Statement

Plaintiffs are five independent truck stops (“Plaintiffs”)—small to medium sized businesses (including one in Bakersfield, California) selling diesel and providing other services to truckers—seeking to represent a national class of thousands of similarly situated independent truck stops. This case charges several companies, including Comdata Network, Inc. (“Comdata”) and its parent, Ceridian Corporation (“Ceridian”), with anticompetitive conduct that has caused Plaintiffs and members of the class to overpay transaction fees on Comdata’s proprietary trucker fleet payment cards.¹ While Plaintiffs, were negotiating with the UCLA Office of Records Management (“UCLA”) regarding the scope of the subpoena *duces tecum* Plaintiffs’ served upon it (“UCLA Subpoena” or “Subpoena”) as discovery in *Universal Delaware, Inc., et al. v. Comdata Network, Inc., et al.*, No. 07-1078-JKG (E.D. Pa. filed Mar. 19, 2007) (“Underlying Litigation”), Ceridian sought to block Plaintiffs’ efforts by moving to quash the Subpoena. Ceridian, on the same day, filed a Motion for a Protective Order with the U.S. District Court for the Eastern District of Pennsylvania (where the Underlying Litigation is pending), seeking the same relief. UCLA, which had initially appeared willing to produce documents in response to the Subpoena,² now awaits this Court’s decision. Ceridian’s Motion to Quash is an unjustified obstructionist tactic and should be denied.

The information sought by the Subpoena pertains to Plaintiffs’ antitrust litigation against Ceridian, among others, for violations of the Sherman Act. Ceridian seeks to prevent Plaintiffs from obtaining documents regarding

¹ Trucking company or fleets contract with third parties to provide truck drivers with fleet payment cards (“Fleet Cards”) to pay for diesel fuel and other items at truck stops across the country.

² UCLA, notably, has not joined Ceridian’s Motion to Quash.

1 transactional data at the center of the conspiracy allegations, communications
2 between Ceridian and defendant Comdata regarding this data, analyses and reports
3 regarding this data, information about the generation and collection of this data, and
4 details about compilation of this data into a specialized “Index” by UCLA and
5 Ceridian.

6 This information is relevant not only to Plaintiffs’ claim that they paid
7 increased transaction fees on Comdata’s Fleet Card in purchasing diesel fuel as a
8 result of the conspiracy between Comdata, Ceridian and other defendants, but also
9 pertinent to showing the effects of the conspiracy. Moreover, the information likely
10 bears upon Ceridian’s direct participation in the Fleet Card market, something
11 Ceridian has vigorously challenged in the Underlying Litigation.

12 Ceridian also makes the unsubstantiated assertion that the UCLA
13 Subpoena will burden UCLA. Not only has Ceridian failed to provide any evidence
14 of how this Subpoena would be oppressive or burdensome to UCLA, prior to
15 Ceridian filing this Motion, UCLA had met and conferred with Plaintiffs regarding
16 their efforts to respond to it.

17 Ceridian’s contention that the Subpoena should be quashed because it
18 could lead to the disclosure of confidential or commercially sensitive information is
19 also unpersuasive. Ceridian has errantly neglected to note that there is a Protective
20 Order in place in the Underlying Litigation that restricts the use and disclosure of
21 documents produced pursuant to its terms, a copy of which was served with the
22 Subpoena. With these protective measures in place, Ceridian’s assertion that
23 “significant harm” may result from this Subpoena is unwarranted.

24 Ceridian’s contention that third parties should not have to produce
25 documents in response to the Subpoena because defendant Comdata has already
26 produced *some* responsive documents is also without merit and irrelevant. The law
27 is clear that Plaintiffs are entitled to third-party discovery regardless of Comdata’s
28 or Ceridian’s production. Moreover, the UCLA Subpoena seeks documents not

1 already produced by Comdata and Ceridian to date and thus cannot be deemed
2 “duplicative.”

3 Ceridian has also failed to show that it has standing to bring this motion
4 or that it has followed the Local Rules requiring that it file the necessary joint
5 stipulation after meeting and conferring regarding this discovery dispute. For these
6 reasons, as well, Plaintiffs request that the Court deny Ceridian’s Motion to Quash.

7 Lastly, Ceridian should not be able to double up judicial resources with
8 this Motion when it is seeking the *exact same relief in another Court*. Ceridian, on
9 May 7, 2010, informed the responsible judge in the Eastern District of Pennsylvania
10 that the company expected this Court to defer to the ruling in the Eastern District—a
11 matter which has been fully briefed, heard and is awaiting decision.

12 Plaintiffs respectfully request the Court to deny Ceridian’s Motion to
13 Quash.

14 **Statement of Facts**

15 Underlying Litigation Background. In the Underlying Litigation,
16 Plaintiffs have alleged on behalf of themselves and a proposed class of thousands of
17 similarly situated independent truck stops (collectively, “Independent Truck Stops”),
18 that defendants Comdata, Comdata’s corporate parent, Ceridian, and major multi-
19 state truck stop chains (the “Major Chains”) (collectively, “Defendants”) have
20 engaged in a scheme involving anticompetitive agreements, exclusionary contracts,
21 and other conduct that had the effect of enhancing and abusing market power in
22 violation of Section 1 and 2 of the Sherman Act (the “Scheme”).³

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25 ³ See Exh. A at ¶¶ 1-9, 12-26, 158-175 [Redacted Second Consolidated
26 Amended Complaint, in *Universal Delaware, Inc., et al. v. Comdata Network, Inc.,*
27 *et al.*, Case No. 07-1078-JKG (E.D. Pa. filed Mar. 19, 2007) (consolidated case)
28 (Docket No. 205) (“Complaint”)] to the Declaration of Dean M. Harvey (“Harvey
Dec.”). All exhibits to the Harvey Dec.

Trucking companies contract with third parties to provide truck drivers with Fleet Cards to pay for diesel fuel and other items at truck stops across the country; Ceridian, through its subsidiary Comdata, is the dominant issuer of Fleet Cards.⁴ Plaintiffs contend that Comdata (with the participation of Ceridian regarding certain aspects of the conduct alleged) entered into an illicit *qui pro quo* with the Major Chains whereby Comdata charged the Major Chains a relatively low flat fee of under \$1 per transaction, while it charged the Plaintiffs a high percentage-based fee of approximately 2% or more per transaction, which amounted to a 500-1000% price differential between Plaintiffs' and the Major Chains' fees.⁵ In exchange, the Chains agreed to enhance and support Comdata's dominance in the Fleet Card market by: (1) refusing to accept certain rival Fleet Cards; (2) agreeing not to issue or promote their own rival Fleet Cards; and (3) agreeing to exclusionary contractual provisions designed to limit competition in the Fleet Card market.⁶ As a result, Plaintiffs allege Comdata and Ceridian maintained sufficient market power to charge Plaintiffs and class members artificially inflated transaction fees without losing market share and were able to shift business to its co-conspirators, the Major Chains.⁷

UCLA Subpoena. After consulting with representatives of the UCLA Office of Legal Affairs, Plaintiffs served the UCLA Subpoena on UCLA on March 10, 2010.⁸ That same day, Plaintiffs also electronically served a copy of the UCLA

⁴ See *id.* at ¶¶ 2, 17-21, 44-57, 138-140.

⁵ See *id.* at ¶¶ 1-9, 80-86, 138-141, 145-149, 158-175.

⁶ See *id.* at ¶¶ 2-9, 87-91, 97, 158-175.

⁷ See *id.* at ¶¶ 1-9, 150-178.

⁸ Harvey Dec. at ¶¶ 3-4; Exh. B [Correspondence from the process server to counsel for Plaintiffs attaching the Proof of Service Subpoena – Civil Case for the UCLA Subpoena, dated March 10, 2010 (“Subpoena Proof of Service”)]; Exh. D [UCLA Subpoena as served on UCLA and Ceridian on March 10, 2010, including the attached Exhibit 1 (the Ceridian-UCLA Pulse of Commerce Index,™ (“White (footnote continued)

1 Subpoena on Defendants.⁹ The UCLA Subpoena seeks documents pertaining to the
 2 Ceridian-UCLA Pulse of Commerce Index (“Index”).¹⁰ The UCLA Subpoena also
 3 includes a copy of the Amended Stipulated Protective Order signed by Judge Henry
 4 S. Perkin on February 20, 2008 (“Protective Order”) as Exhibit 3.¹¹

5 Pertinent here, the Index (also referred to as “PCI”) and its associated
 6 monthly reports are products of Ceridian’s partnership with UCLA Anderson School
 7 of Management and Charles River Associates.¹² The Index is constructed from real-
 8 time information regarding the purchase of diesel fuel supplied by Ceridian through
 9 its Comdata subsidiary.¹³ Every time a diesel purchase is made with a Ceridian
 10 payment card (the vast majority of these transactions use a proprietary Comdata
 11 card), data regarding that transaction is “immediately available” for use in the
 12 Index.¹⁴ Furthermore, only data regarding purchases of diesel fuel for large (“long
 13 haul”) trucks processed by Ceridian through its Comdata subsidiary is used to
 14 construct the Index.¹⁵ By collecting and analyzing data regarding the transportation
 15 flow of these trucks across the United States, the Index aims to be “a proxy measure
 16 for an existing index of economic activity,” and also “an independent measure of the
 17 health of the economy.”¹⁶

18
 19 Paper”)), Exhibit 2 (ESI Production Specification), Exhibit 3 (the Amended
 20 Stipulated Protective Order signed by Judge Henry S. Perkins on February 20, 2008
 21 (“Protective Order”)).

22 ⁹ Harvey Dec. at ¶ 5; Exh. C [E-mail correspondence sent on behalf counsel for
 23 Plaintiffs to counsel for Ceridian attaching a copy of the Subpoena, dated March 10,
 2010 (“Subpoena Notice to Ceridian”)]; Exh. D [UCLA Subpoena].

24 ¹⁰ See Exh. D at RFP Nos. 1-8 [UCLA Subpoena].

25 ¹¹ See Exh. D at Protective Order [UCLA Subpoena, Exhibit 3].

26 ¹² Exh. D at White Paper, p. 2 [UCLA Subpoena, Exhibit 1].

27 ¹³ See *id.* at p. 2-3.

28 ¹⁴ See *id.*

¹⁵ See *id.* at p. 8.

¹⁶ *Id.* at p. 2.

1 The UCLA Subpoena seeks discovery regarding the Index specifically
 2 concerning: (1) reports and analyses relating to the Index (Request for Production
 3 (“RFP”) No. 1); (2) the identities of all persons responsible for establishing,
 4 administering, organizing, calculating, or publicizing either the Index or the
 5 transactional data (RFP No. 2); (3) the source and location of the transactional data
 6 (RFP No. 3); (4) the construction of the Index (RFP Nos. 3 and 4); (5) agreements
 7 and communications between and among Ceridian, Comdata, UCLA, Charles River
 8 Associates, and/or any other third party regarding analysis of the Index before or
 9 since its formation (RFP Nos. 5 and 6); (6) the transactional data itself and the
 10 identities of all Trucker Fleets and Truckers whose transactions are found in the
 11 transaction data and the location of those transactions (RFP No. 7); (7) Ceridian’s
 12 card payment services for the transportation industry and Ceridian’s database of
 13 transactional data and its ability to track and monitor this data in real time (RFP No.
 14 8).¹⁷

15 Plaintiffs’ Meet and Confer Discussions with UCLA Regarding the
 16 Subpoena. On March 10, 2010, Plaintiffs contacted UCLA requesting a conference
 17 regarding the UCLA Subpoena.¹⁸ On March 18, 2010, UCLA responded stating that
 18 it was “diligently collecting” documents responsive to the Subpoena and requesting
 19 an extension of the deadlines to serve responses (to April 19, 2010) and objections
 20 (to April 7, 2010) to be able to review the information for “privileged, proprietary or
 21 other matters” before responding.¹⁹ Plaintiffs immediately agreed to these extension
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 25 ¹⁷ See Exh. D at RFP Nos. 1-8 [UCLA Subpoena].

26 ¹⁸ See Exh. E [Correspondence from Dean M. Harvey to Kevin S. Reed, dated
 March 10, 2010].

27 ¹⁹ Exh. F [Correspondence from Patricia M. Jasper to Mr. Harvey, dated March
 28 18, 2010 (“Jasper March 18 Corr.”)].

1 requests and asked UCLA to contact Plaintiffs to meet and confer regarding
2 production issues once UCLA had a chance to review the relevant documents.²⁰

3 Two days after Ceridian filed the Motion to Quash and the Motion for
4 Protective Order regarding the UCLA Subpoena, Plaintiffs received UCLA's
5 objections to this Subpoena ("Subpoena Objections").²¹ In its Subpoena Objections,
6 UCLA states that it will not comply with the Subpoena until the Court rules on
7 Ceridian's Motion to Quash.²² It also, for the first time, objected to the Subpoena on
8 the basis that it may call for confidential information (irrespective the Protective
9 Order attached to the Subpoena) and to the format of the production requested,
10 despite Plaintiffs' understanding that the parties had already agreed to meet and
11 confer to resolve any questions or concerns UCLA had regarding the production.²³

12 After receiving the Subpoena Objections, Plaintiffs contacted UCLA
13 several times requesting a conference to discuss and resolve any of its concerns, but
14 did not receive a response back for several days.²⁴ On April 26, 2010, UCLA
15 contacted Plaintiffs to state that it would not produce documents until the Court has
16 ruled upon Ceridian's Motion to Quash.²⁵ Regarding UCLA's concerns over the
17 production format, Plaintiffs stated that they would be flexible as to the format and
18 work with UCLA to minimize any production burdens.²⁶

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21 ²⁰ See Harvey Dec. at ¶ 9; Exh. G [Correspondence from Mr. Harvey to Ms.
Jasper, dated March 18, 2010 ("Harvey March 18 Corr.")].

22 ²¹ See Harvey Dec. at ¶ 12; Exh. H [Third-Party the Regents of California's
23 Objections to Subpoena for Document Production, dated April 7, 2010 ("Subpoena
Objections")].

24 ²² See Exh. H at 3 [Subpoena Objections].

25 ²³ See *id.*; Harvey Dec. at ¶ 9; Exh. G [Jasper March 18 Corr.].

26 ²⁴ See Harvey Dec. at ¶ 13-15; Exh. I [Correspondence from Mr. Harvey to
Charles F. Robinson and Eric K. Behrens, dated April 16, 2010].

27 ²⁵ See Harvey Dec. at ¶ 16.

28 ²⁶ See *id.*

1 Plaintiffs Received No Joint Stipulation From Ceridian Regarding This
 2 Motion. Not until the day before filing the Motion to Quash did Ceridian contact
 3 Plaintiffs regarding the Subpoena for the first time.²⁷ At this time, Ceridian
 4 requested that Plaintiffs withdraw the Subpoena.²⁸ Plaintiffs did not agree to this
 5 request for the reasons set forth *infra*.²⁹ However, at no point before filing the
 6 Motion to Quash did Ceridian mention or provide Plaintiffs with a written
 7 stipulation outlining its arguments in support of its request that the UCLA Subpoena
 8 be withdrawn.³⁰

9 Ceridian Simultaneously Filed a Motion to Quash and a Motion for
 10 Protective Order Regarding UCLA Subpoena in Two Different Courts. On April 6,
 11 2010, Ceridian filed its Motion to Quash in this Court and a Motion for Protective
 12 Order Regarding Plaintiffs' Discovery Seeking Irrelevant Confidential Information
 13 ("Motion for Protective Order") in the United States District Court for the Eastern
 14 District of Pennsylvania (collectively, "Motions").³¹ These Motions request two
 15 different courts to grant the same relief: the withdrawal of the UCLA Subpoena.³²
 16 The proceeding in the forum court have been fully briefed, a hearing has been
 17 conducted, and a decision is imminent.

22 ²⁷ Harvey Dec. at ¶ 17; Exh. J [Correspondence from Mr. Harvey to Shannon
 23 McClure, dated April 8, 2010 ("April 8 Corr.")].

24 ²⁸ *Id.*

25 ²⁹ *See id.*

26 ³⁰ *See id.*

27 ³¹ *See* Motion to Quash; Exh. K [Ceridian's concurrently filed Motion for
 28 Protective Order in U.S. District Court for Eastern District of Pennsylvania, dated
 April 6, 2010 ("Motion for Protective Order")].

³² *See id.*

Argument

I. CERIDIAN'S MOTION IS PROCEDURALLY DEFECTIVE AND SHOULD BE DISMISSED

A. The Court Should Not Consider This Motion Because Ceridian Failed Enter into a Joint Stipulation with Plaintiffs Prior to Filing This Motion As Required By Local Rules 45-1 and 37.

Ceridian's contention that Local Rules 7-3 and 16-2 exempt its Motion from the conference of counsel requirements is a misreading of the Local Rules.³³ See Notice of Mot. at 1. To the contrary, Local Rule 45-1 is directly on point and states that Local Rule 37 applies to motions relating to discovery subpoenas served on non-parties represented by counsel, such as the UCLA Subpoena.

Given that Ceridian never discussed or sent a written stipulation outlining its reasons for requesting that Plaintiffs withdraw the UCLA Subpoena, Ceridian has not met the requirements of Local Rules 37-1, 37-2, 37-2.1, and 37-2.2.³⁴ Pursuant to Local Rule 37-2.4 and 37-4, the Court therefore should dismiss

³³ Ceridian also mistakenly contends that because Plaintiffs served Defendants with a copy of the UCLA Subpoena several hours after serving it on UCLA, they have not met the "notice" requirement under the Federal Rules. See Mot. at 6-7. The very case that Ceridian cites in support of its arguments, *McCurdy v. Wedgewood Capital Mgmt. Co., Inc.*, 1998 WL 964185 (E.D. Pa. Nov. 16, 1998), however, shows otherwise. In *McCurdy*, a party did not provide notice of a subpoena until two weeks after it was served and two days prior to the date set for producing documents. *Id.* at *7. Despite this tardy service, the court in *McCurdy* rejected defendant's request for relief because the defendant "suffered little, if any, actual prejudice." *Id.* at *8. Ceridian has not suffered any "actual prejudice" given that it has timely filed the Motion at issue here. See *id.*; *Kingsway Fin. Serv., Inc. v. Pricewater-House-Coopers LLP*, 2008 U.S. Dist. LEXIS 77018, *11-12 (S.D.N.Y. Oct. 2, 2008) (holding that service to defendants seven days after service to third party did not prejudice defendants because they still were able to object to the subpoena and move to quash it before any documents were produced). Ceridian's argument is therefore moot.

³⁴ See Harvey Dec. at ¶ 17; Exh. J [April 8 Corr.].

1 Ceridian's Motion to Quash without consideration and sanction Ceridian for failing
2 to meet the requirements set forth in Local Rule 37.

3 **B. Ceridian Has Failed to Show That It Has Standing to Bring This**
4 **Motion.**

5 Ceridian has failed to show that it has standing to bring this Motion to
6 Quash. In fact, the very cases Ceridian cites show that under Rule 45(c)(3) of the
7 Federal Rules of Civil Procedure a party lacks standing to quash a subpoena served
8 on a non-party absent a showing of privilege. *Televisa, S.A. de C.V. v. Univision*
9 *Commc'ns, Inc.*, 2008 WL 4951213 at *1 (C.D. Cal. Nov. 17, 2008) ("[A] party may
10 not quash a subpoena served upon a non-party on any grounds other than
11 privilege.") (citations omitted); *White Mule Co. v. ATC Leasing Co. LLC*, 2008 WL
12 2680273, at *4 (N.D. Ohio June 25, 2008) (finding that defendant lacked standing to
13 move to quash subpoenas to non-parties because it presented "no privilege or special
14 interest that is adversely affected by the subpoenas"); *In re Remec, Inc. Sec. Litig.*,
15 2008 WL 2282647 at *1 (S.D. Cal. May 30, 2008) ("[A] party lacks standing under
16 [Fed. R. Civ. P.] 45(c)(3) to challenge a subpoena issued to a non-party unless the
17 party claims a personal right or privilege with respect to the documents requested in
18 the subpoena.") (citations omitted); *G.K. Las Vegas Ltd. Partnership v. Simon*
19 *Property Group, Inc.*, 2007 WL 119148, at *3 (D. Nev. Jan. 9, 2007) (same);
20 *compare In re Ashworth, Inc. Sec. Lit.*, 2002 WL 33009225, at *1-2 (S.D. Cal. May
21 10, 2002) (finding defendants had standing to seek a *protective order* under Fed. R.
22 Civ. P. 26 when contesting relevance, but requiring a showing of an interest in the
23 information requested by the third-party subpoenas to move to quash them).

24 Ceridian has failed to show in its argument for standing how it has a
25 privilege or personal interest in the information requested by the UCLA Subpoena.
26 Moreover, any concerns regarding the disclosure of any confidential information
27 requested by the Subpoena would be alleviated by the Protective Order currently in
28 place in the Underlying Litigation, which is discussed more *infra* at Section III.

1 While Ceridian relies on *Moon v. SCP Pool Corp.*, 232 F.R.D. 633
 2 (C.D. Cal. 2005), for the proposition that parties *generally* have standing to bring a
 3 motion to quash a subpoena to a non-party, it reads this case too broadly.³⁵ Ceridian
 4 must still show how it has a privilege or personal interest in this data to have
 5 standing to bring this Motion to Quash—which it has not done. The Court should
 6 therefore deny Ceridian’s Motion for lack of standing.

7
 8 **C. Ceridian Is Simultaneously Seeking Duplicative Relief In Another**
 9 **Court.**

10 Ceridian fails to mention that it is simultaneously seeking *the exact*
 11 *same relief* in the court where the Underlying Litigation is currently pending. The
 12 same day Ceridian filed the Motion to Quash at issue here, it also filed a Motion for
 13 Protective Order in the U.S. District Court for the Eastern District of Pennsylvania
 14 seeking an order to require withdrawal of the UCLA Subpoena.³⁶ Ceridian’s efforts
 15 to have two courts order relief on the same matter runs contrary to the principals of
 16 judicial economy which aims to prevent duplicity in the federal system. *See U.S. v.*
 17 *Martin Linen Supply Co.*, 485 F.2d 1143, 1148 n.7 (5th Cir. 1973) (“The rationale of
 18 judicial economy to prevent duplicity in the federal system has precedent in the
 19

20
 21 ³⁵ In *Moon*, the non-party failed to file timely objections to plaintiffs’ subpoena,
 22 but the court found that the defendant’s objections to plaintiffs’ subpoena—while
 23 not permitted under the law—were timely and were thus not waived given the
 24 subpoena’s overbroad nature. *Id.* at 636. In making this finding, the court noted
 25 that while a party cannot object to a subpoena served on a non-party, it could seek a
 26 protective order or make a motion to quash—without discussing the standard
 27 further. *Id.* *Moon*, however, presents extenuating circumstances not present here,
 28 *i.e.* UCLA has not failed to file timely objections and Ceridian is not preserving its
 rights by filing the Motion to Quash. There is no reason therefore for the Court to
 read the language in *Moon* broadly and apply it to the facts presented here.

³⁶ See Motion to Quash; Exh. K [Motion for Protective Order].

1 policy underlying crossclaims, pendant and ancillary jurisdiction.”) (citations
2 omitted). The Court should deny Ceridian’s Motion to Quash on this ground alone.

3 **II. CERIDIAN’S MOTION SHOULD BE DENIED BECAUSE IT HAS**
4 **FAILED TO SHOW UCLA WILL SUFFER UNDUE BURDEN IN**
5 **PRODUCING THE RELEVANT INFORMATION CALLED FOR BY**
6 **THE SUBPOENA**

7 As the party moving to quash, Ceridian bears the burden of persuasion
8 to demonstrate that the UCLA Subpoena is unduly burdensome. *See Green v. Baca*,
9 226 F.R.D. 624, 653 (C.D. Cal. 2005); Fed. R. Civ. P. 45(c)(3)(A)(iv). This burden
10 is a “heavy one.” *Heat and Control, Inc. v. Hester Indus., Inc.*, 785 F.2d 1017,
11 1024-25 (Fed. Cir. 1986) (noting that “the factors required to be balanced by the
12 trial court in determining the propriety of a subpoena are the relevance of the
13 discovery sought, the requesting party’s need, and the potential hardship to the party
14 subject to the subpoena”). Here, Ceridian has failed to satisfy its burden.

15 **A. The UCLA Subpoena Seeks Documents Relevant to Plaintiffs’**
16 **Claims, including Plaintiffs’ Damages Claims.**

17 In evaluating whether a subpoena is unduly burdensome, one of the
18 factors weighed is the relevance of the discovery sought. *See Gonzales v. Google*,
19 *Inc.*, 234 F.R.D. 674, 680 (N.D. Cal. 2006). The proper scope of discovery for a
20 subpoena governed by Federal Rule of Civil Procedure 45 is set forth in Rule 26(b)
21 of the Federal Rules of Civil Procedure (“Rule 26(b)”). *Id.* at 679; *Heat and*
22 *Control*, 785 F.2d at 1023 (“[R]ule 45(b)(1) must be read in light of Rule 26(b).”).
23 Relevance under Rule 26(b)(1) “has been construed broadly to encompass any
24 matter that bears on, or that reasonably could lead to other matter that could bear on,
25 any issue that is or may be in the case.” *Oppenheimer Fund, Inc. v. Sanders*, 437
26 U.S. 340, 351 (1978). Moreover, a “court should be permissive” where it is only
27 supervising “discovery ancillary to an action in another district” and “relevance is in
28 doubt.” *Google*, 234 F.R.D. at 681-682 (giving the party issuing the subpoena the
“benefit of the doubt” that the information sought by the subpoena was relevant to

1 the underlying case given the broad definition of relevance); *Jewish War Veterans of*
 2 *the U.S.A., Inc. v. Gates*, 506 F. Supp. 2d 30, 42 (D.D.C. 2007) (“[T]he general
 3 policy favoring broad discovery is particularly applicable where . . . the court
 4 making the relevance determination has jurisdiction only over the discovery dispute
 5”). Here, in contrast to Ceridian’s assertions, the information the UCLA
 6 Subpoena seeks directly bears on Plaintiffs’ claims and damage theory in the
 7 Underlying Litigation and is therefore incontrovertibly relevant.

8 1. **Information sought by the Subpoena is relevant to Plaintiffs’**
 9 **claim that Ceridian and Comdata schemed to maintain**
 10 **market share and artificially inflated transaction fees for**
 11 **Plaintiffs’ diesel fuel purchases.**

12 In the Underlying Litigation, Plaintiffs allege that Comdata, with the
 13 active participation of Ceridian as to certain aspects of the challenged conduct,
 14 entered into an illicit *qui pro quo* with the Major Chains whereby Comdata
 15 artificially inflated transaction fees to Independent Truck Stops, while keeping fees
 16 to the Major Chains lower, in exchange for an agreement by the Major Chains to
 17 enhance and support Comdata’s dominance in the Fleet Card market.³⁷ Through
 18 these activities, Comdata and Ceridian maintained sufficient market power to charge
 19 Plaintiffs artificially inflated transaction fees without losing market share.³⁸ Critical
 20 to these claims therefore is information related to the fuel transaction fees actually
 21 charged, which Plaintiffs assert were “computed based on a percentage of sales to
 22 Comdata”³⁹ And, the Index’s website and marketing materials unequivocally
 23 state that “information on the purchases of diesel fuel for trucks . . . made with a
 24
 25

26 ³⁷ See Exh. A at ¶¶ 1-9, 138-141, 145-149, 150-175 [Complaint].

27 ³⁸ See *id.*

28 ³⁹ *Id.* at ¶ 27.

1 Ceridian payment card,” the majority of which are proprietary Comdata cards, is
2 collected by Ceridian and made available for use in the Index in real time.⁴⁰

3 Given the type of data the Index is constructed upon and the
4 intertwined relationships between Ceridian, Comdata, and UCLA depicted by the
5 Index’s promotional materials and website, www.ceridianindex.com, the
6 information requested by the UCLA Subpoena is relevant to Plaintiffs’ claims that
7 Ceridian and Comdata conspired to maintain market share and charge Plaintiffs
8 artificially inflated transactional fees. For example, the UCLA Subpoena seeks
9 documents in UCLA’s possession showing:

- 10 1) reports and analyses relating to the Index (Request for Production (“RFP”)
11 No. 1);
- 12 2) the identities of all persons responsible for establishing, administering,
13 organizing, calculating, or publicizing either the Index or the transactional
14 data (RFP No. 2);
- 15 3) the source and location of the transactional data (RFP No. 3);
- 16 4) the construction of the Index (RFP Nos. 3 and 4);
- 17 5) agreements and communications between and among Ceridian, Comdata,
18 UCLA, Charles River Associates, and/or any other third party regarding any
19 analysis of the Index before or since its formation (RFP Nos. 5 and 6);
- 20 6) the transactional data itself and the identities of all Trucker Fleets and
21 Truckers whose transactions are found in the transaction data and the location
22 of those transactions (RFP No. 7);
- 23 7) Ceridian’s card payment services for the transportation industry and
24 Ceridian’s database of transactional data and its ability to track and monitor
25 this data in real time (RFP No. 8).⁴¹

26 ⁴⁰ See Exh. D at White Paper, p. 3 (“Every time a diesel fuel purchase is made
27 with a *Ceridian* payment card, the information about that transaction is immediately
28 available.”) (emphasis added); p. 3, n.1 (“The vast majority of transactions use a
proprietary Comdata card...”); p. 2 (“These transactions are processed within a
fraction of a second, providing Ceridian with real data in real time”) [UCLA
Subpoena, Exhibit 1].

⁴¹ Exh. D at RFP Nos. 1-8 [UCLA Subpoena].

1 In asserting that “[n]othing sought by the UCLA Subpoena in any way
 2 relates to the pricing established for a Comdata card transaction fee” (Mot. at 10),
 3 Ceridian is blind to numerous ways in which the information requested may lead to
 4 admissible evidence and the liberal policy favoring discovery in antitrust cases
 5 alleging conspiracy. *See In re Urethane Antitrust Litig.*, 261 F.R.D. 570, 574 (D.
 6 Kan. 2009) (stating that it was not clear that the discovery requested by plaintiffs,
 7 which lacked geographic limitations, would “have no possible bearing on plaintiffs’
 8 claims that defendants participated in a conspiracy to allocate the market and fix
 9 prices” in the United States and thus finding them relevant) (internal quotations
 10 omitted); *In re Auto. Refinishing Paint Antitrust Litig.*, 2004 U.S. Dist. LEXIS
 11 29160 at *8 (E.D. Pa. Oct. 29, 2004) (“Broad discovery is permitted [in antitrust
 12 cases] because direct evidence of an antitrust conspiracy is often difficult to obtain,
 13 and the existence of a conspiracy frequently can be established only through
 14 circumstantial evidence, such as business documents and other records.”).

15 As its promotional materials indicate, the Index is constructed from
 16 “information on the purchases of diesel fuel for trucks” made with Ceridian payment
 17 cards.⁴² This type of transactional data is on its face central to Plaintiffs’ claims that
 18 Ceridian, through Comdata, charged differential, anticompetitive fees to Plaintiffs as
 19 a result of their Scheme with Defendants, despite Ceridian’s contentions otherwise.
 20 Volume of diesel sales, upon which the transaction fees are based, may relate to
 21 market definition, market share and competitive alternatives. Further, even if the
 22 underlying data does not include transaction fees (which would contradict

23
 24 ⁴² Ceridian’s own website states: “Ceridian captures millions of transactions
 25 from over 25,000 customers, including over the road trucking companies and
 26 packaged-goods distribution companies. The sample size is vast and statistically
 27 valid for purposes of economic analysis.” FAQ: Ceridian-UCLA Pulse of
 28 Commerce Index, <http://www.ceridianindex.com/about-the-index/faq/> (emphasis added).

1 Ceridian's public assertion: "The data used in the construction of the PCI includes
 2 all electronically available transaction information," (Exh. D at White Paper, p. 3
 3 n.1 [UCLA Subpoena, Exhibit 1]) (emphasis added)), information regarding the
 4 volume of fuel purchases, the locations of these purchases, and changes over time,
 5 are relevant to Plaintiffs' ability to demonstrate the impact of the Scheme on the
 6 proposed class and the benefits of the Scheme to the Major Chains. For example,
 7 the data underlying the Index may permit Plaintiffs to determine whether the
 8 Scheme resulted in increased fuel purchases at the Major Chains' truck stops and
 9 decreased fuel purchases at Plaintiffs' truck stops.

10 The UCLA Subpoena also seeks documents related to this transactional
 11 data and the Index itself that could well "lead to evidence that illuminates
 12 defendants' motive and opportunity for the alleged conspiracy..., the breadth of the
 13 conspiracy, and the manner by which defendants fraudulently concealed the
 14 conspiracy " or to the discovery of "the identity and location of potential witnesses
 15 and to impeach defendants' trial witnesses." *In re Plastics Additives Antitrust Litig.*,
 16 2004 WL 2743591 at *14 (E.D. Pa. Nov. 29, 2004) (requiring defendants to produce
 17 documents provided to foreign investigatory authorities despite defendants' claim
 18 that this would impose a substantial burden on them). Of potentially crucial
 19 relevance is information regarding the entities that collect, maintain, and supervise
 20 the transactional data. For example, Ceridian represents that Ceridian itself collects,
 21 maintains, and scrutinizes this transactional data in real time in the Index
 22 promotional materials.⁴³ The extent of Ceridian's involvement in these transactions
 23

24
 25 ⁴³ See Exh. D at White Paper, p. 2-3 [UCLA Subpoena, Exhibit 1]; FAQ:
 26 Ceridian-UCLA Pulse of Commerce Index, [http://www.ceridianindex.com/about-](http://www.ceridianindex.com/about-the-index/faq/)
 27 [the-index/faq/](http://www.ceridianindex.com/about-the-index/faq/) ("Through Ceridian's electronic card payment services for
 28 transportation industries, Ceridian tracks and analyzes the volume of fuel being used
 by [trucks] on a yearly, monthly, weekly and daily basis. . . . "Ceridian captures
 (footnote continued)

1 is therefore relevant to Plaintiffs' claims regarding Ceridian's role in Comdata's
 2 business and the underlying conduct, a role that Ceridian is challenging in the
 3 Underlying Litigation.

4 Likewise, analyses and communications between and among Ceridian,
 5 Comdata, UCLA Anderson School of Management, Charles River Associates,
 6 and/or any other third party regarding the Index are likely to include descriptions of
 7 the extent and nature of Ceridian's knowledge of, and participation in, Comdata's
 8 operations, the identities of individuals at Ceridian with knowledge of and
 9 responsibility for Comdata's operations; analyses of potential competition to
 10 Ceridian's fuel cards, and the relevant markets and Ceridian's market power in those
 11 markets;⁴⁴ and procedures and techniques for using Ceridian's transactional data
 12 pertinent to Plaintiffs' experts' classwide analyses of impact and damages.

13 Given that the aforementioned documents sought by the UCLA
 14 Subpoena are relevant to Plaintiffs' claims and well within the scope of discovery
 15 permitted in antitrust cases, the Court should not permit Ceridian to prevent UCLA
 16 from producing them.

17 **2. The information sought by the UCLA Subpoena is relevant**
 18 **to Plaintiffs' damages theory.**

19 The transactional data and related information requested by the UCLA
 20 Subpoena is also relevant to Plaintiffs' request for damages "measured as the
 21 overcharges Plaintiffs...paid as a result of the Defendants' anticompetitive conduct,
 22
 23

24 millions of transactions from over 25,000 customers, including over the road
 25 trucking companies and packaged-goods distribution companies.").

26 ⁴⁴ It is telling that the Index purports to be representative of the entire U.S.
 27 economy by relying only on Ceridian's transactional data. The Index does not
 28 include cash transactions or transactions with rival Fleet Card issuers. *See* Exh. D at
 White Paper, p. 8 [UCLA Subpoena, Exhibit 1].

1 trebled[.]”⁴⁵ The amount of these increased transactional fees mandated by Ceridian
 2 and charged by Comdata, which Plaintiffs allege are a percentage of the total
 3 transaction values paid, will be the raw data on which Plaintiffs can calculate or
 4 verify their damages and are thus uncontrovertibly relevant.⁴⁶ Furthermore,
 5 information regarding the origination, collection, cataloguing, and/or analysis of this
 6 transactional data is also relevant to the value of Plaintiffs’ damages. These are just
 7 a few of many examples of how this information may lead to admissible evidence
 8 and is therefore relevant under the standard set forth in Rule 26(b).

9 **3. Temporal scope of information sought by the Subpoena is**
 10 **relevant to Plaintiffs’ “ongoing conspiracy” claim.**

11 Ceridian’s assertion that the documents sought by the UCLA Subpoena
 12 are “temporally remote” from Plaintiffs’ allegations is without merit. Plaintiffs’
 13 alleged “Class Period” set forth in their Complaint is “from March 2003 until the
 14 effects of Defendants’ anticompetitive conduct cease.”⁴⁷ Moreover, Plaintiffs allege
 15 that the underlying Scheme began in the late 1990s and “is continuing, [as are] are
 16 the overcharges suffered by Plaintiffs as a result of the Scheme.”⁴⁸ For example, one
 17 or more contracts between Comdata, Ceridian and the Major Chains containing the
 18 restrictive provisions at issue have been recently renegotiated and renewed.⁴⁹ Given
 19 Plaintiffs’ alleged “ongoing” time period for the Scheme and the broad scope of
 20 discovery permitted in antitrust cases noted *supra*, Ceridian has also failed to show
 21 that the information requested by the UCLA Subpoena is not “temporally” relevant

22
 23 ⁴⁵ Exh. A at Request for Relief [Complaint].

24 ⁴⁶ *See id.* at ¶¶ 27, 140-141. Plaintiffs note that Ceridian made no mention of
 25 the applicability of this data to Plaintiffs’ damage calculations in its argument that
 the data sought by the UCLA Subpoena is not relevant.

26 ⁴⁷ *Id.* at ¶ 27.

27 ⁴⁸ *Id.* at ¶ 156; *see* ¶¶ 19-21, 27.

28 ⁴⁹ *See id.* at ¶¶ 97, 108 110-114 [¶¶ 108, 110-112 have been redacted in the
 Complaint filed herewith to avoid an under seal filing]

1 to the Plaintiffs' claims in the Underlying Litigation. *See New Park Entm't L.L.C. v.*
 2 *Elec. Factory Concerts, Inc.*, 2000 U.S. Dist. LEXIS 531 at *11 (E.D. Cal. January
 3 13, 2000) (finding that conduct occurring *before* the alleged conspiracy began is
 4 relevant and "defendants and third-parties cannot withhold information solely on
 5 [that] basis").

6 **B. Ceridian Has Not Provided Specific and Compelling Proof That**
 7 **UCLA Will Be Unduly Burdened By the Subpoena.**

8 A party claiming that production of requested documents is oppressive
 9 bears the burden of proving up the objection. *Northrop Corp. v. McDonnell*
 10 *Douglas Corp.*, 751 F.2d 395, 403 (D.C. Cir. 1984) (reversing district court's order
 11 quashing subpoena). The party cannot rest on conclusory assertions. *See Goodman*
 12 *v. U.S.*, 369 F.2d 166, 169 (9th Cir. 1966) (reversing the quashing of a subpoena
 13 because of lack of specific evidence of burden). Rather, "[t]he party must provide
 14 specific and compelling proof that the burden is undue." *JZ Buckingham Invs., LLC*
 15 *v. U.S.*, 78 Fed. Cl. 15, 25 (Fed. Cl. Ct. 2007) (denying motion to quash).

16 While asserting that that the UCLA Subpoena is intended "to harass
 17 Ceridian and UCLA" (Mot. at 11), Ceridian offers no evidence in support of this
 18 claim.⁵⁰ There is not even a description, for example, of the volume of documents
 19 involved or the time or expense it would take to gather them in order to respond to
 20 the subpoenas. Courts consistently hold that the mere allegation of undue burden,
 21 without evidentiary support, is insufficient to resist discovery. *See A. Farber and*
 22 *Partners, Inc. v. Garber*, 234 F.R.D. 186, 188 (C.D. Cal. 2006) ("[G]eneral or
 23 boilerplate objections such as overly burdensome and harassing are improper—
 24 especially when a party fails to submit any evidentiary declarations supporting such
 25

26 ⁵⁰ Indeed, Ceridian's complaints about any alleged burden are irrelevant. "The
 27 burden of showing that a subpoena is unreasonable and oppressive *is upon the party*
 28 *to whom it is directed.*" *Goodman*, 369 F.2d at 169 (emphasis added).

1 objections.”) (internal quotations omitted).⁵¹ Ceridian has failed to prove any undue
 2 burden to UCLA, and its objection fails for this reason alone under established law.

3 Furthermore, prior to Ceridian filing the Motion to Quash, Plaintiffs
 4 had met and conferred with counsel for UCLA regarding the Subpoena. Counsel for
 5 UCLA had told Plaintiffs that UCLA was “diligently collecting” and reviewing
 6 responsive information. As soon as Ceridian filed the Motion to Quash, however,
 7 UCLA reversed course and refused to produce any responsive information until this
 8 Motion was resolved.⁵² Although UCLA served objections and has put responding
 9 to the Subpoena on hold until the Court adjudicates this matter, Plaintiffs believe
 10 that Plaintiffs and UCLA will be able to resolve UCLA’s concerns over the
 11 production format and the alleged confidentiality concerns regarding this
 12 information through the meet and confer process.⁵³

13 **III. CERIDIAN’S MOTION SHOULD BE DENIED BECAUSE THE**
 14 **PROTECTIVE ORDER ADEQUATELY PROTECTS ANY**
 15 **COMMERCIAL OR CONFIDENTIAL DOCUMENTS SOUGHT BY**
 16 **THE SUBPOENA**

17 Ceridian’s argument that the UCLA Subpoena should be quashed under
 18 Federal Rule of Civil Procedure 45(c)(3)(B)(i) is equally unpersuasive. Even if
 19 Ceridian could prove that the information requested by the UCLA Subpoena is

20
 21 ⁵¹ See also *Panola Land Buyers Ass’n v. Shuman*, 762 F.2d 1550, 1559 (11th
 22 Cir. 1985) (conclusory recitations of expense and burdensomeness are not
 23 sufficiently specific to demonstrate why requested discovery is objectionable).

24 ⁵² See Exh. F [Jasper March 18 Corr.]; Exh G [Harvey March 18 Corr.]; Harvey
 25 Dec. at ¶¶9, 16; Exh. H at 3 [Subpoena Objections].

26 ⁵³ As addressed *infra*, any confidentiality concerns regarding the disclosure of
 27 the information requested by the UCLA Subpoena are put to rest by the Protective
 28 Order in place in the Underlying Litigation. See *Heat & Control*, 785 F.2d at 1025
 (“[T]he selective disclosure of protectable trade secrets is not *per se* unreasonable
 and oppressive, when appropriate protective measures are imposed.”) (internal
 quotations omitted).

1 confidential, which it has not done,⁵⁴ the Protective Order applicable to and served
 2 with the UCLA Subpoena alleviates any confidentiality concerns regarding the
 3 responsive documents.⁵⁵

4 Notably, however, Ceridian fails to mention this Protective Order anywhere
 5 in its Motion to Quash. This omission is especially suspect as the Protective Order
 6 specifically addresses the treatment of “Highly Confidential” documents that
 7 contain “trade secrets, highly sensitive and non-public research and analysis ... and
 8 communications regarding” these types of information.⁵⁶ The Protective Order
 9 requires that these “Highly Confidential” documents only be disclosed to outside
 10 counsel for the parties, outside experts and consultants, litigation support services,
 11 the Court and related staff.⁵⁷

12 Given that “there is no absolute privilege for trade secrets and similar
 13 information,” courts must “balance the need for the trade secrets against the claim of
 14 injury resulting from the disclosure.” *See Google*, 234 F.R.D. at 685. Pursuant to
 15 the Protective Order, any confidential or commercially sensitive information
 16 requested by the Subpoena cannot be disclosed to competitors.⁵⁸ Ceridian therefore
 17 has not shown that producing the documents called for by the UCLA Subpoena will

18
 19 ⁵⁴ Ceridian fails to provide evidence of any non-disclosure agreement between
 20 Ceridian and UCLA. *See Google*, 234 F.R.D. at 684 (“Trade secret or commercially
 21 sensitive information must be important proprietary information and the party
 22 challenging the subpoena must make a strong showing that it has historically sought
 23 to maintain the confidentiality of this information.”) (internal quotations omitted).
 The record therefore suggests nothing more than an arm’s-length commercial
 relationship.

24 ⁵⁵ *See* Exh. D at Protective Order, p. 1 [UCLA Subpoena, Exhibit 3] (“This
 25 Amended Stipulated Protective Order ... governs the use and handling of documents
 26 ... produced or given by any ... individual or entity in pre-trial proceedings” in the
 Underlying Litigation.).

26 ⁵⁶ *Id.* at Protective Order, p. 2.

27 ⁵⁷ *Id.* at 4.

28 ⁵⁸ *See id.*

1 result in “significant[] harm” (Mot. at 12) to Ceridian or UCLA. Moreover, the
 2 relevance and Plaintiffs’ need for this information has been established. *See Coca-*
 3 *Cola Bottling Co. of Shreveport, Inc. v Coca-Cola Co.*, 107 F.R.D. 288, 297-298
 4 (D. Del. 1985) (“As in most disputes regarding the discoverability of trade secrets . .
 5 . the necessity of the discovery of the [confidential information] follows logically
 6 from the determination that the [confidential information is] relevant.”).
 7 Accordingly, the Court should not prevent UCLA from producing this information
 8 even if it is confidential because it is adequately protected by the Protective Order.
 9 *See Compaq Computer Corp. v. Packard Bell Elecs., Inc.*, 163 F.R.D. 329, 339
 10 (N.D. Cal. 1995) (finding that the production a third party’s commercially-sensitive
 11 responsive documents would be appropriate if they were classified as “special
 12 confidential” under the protective order in place).

13 **IV. PLAINTIFFS’ SUBPOENA IS NOT UNREASONABLY** 14 **DUPLICATIVE**

15 Ceridian’s argument that “*much of*” the raw data used to create the
 16 Index has already been produced by Comdata (Mot. at 12 (emphasis added)) is
 17 unpersuasive for two key reasons. First, the fact that documents *may be* available
 18 from other sources, including one of the parties, is not grounds to refuse production.
 19 Second, the UCLA Subpoena seeks documents not already produced by Comdata or
 20 Ceridian.

21 **A. That Documents May Be Available From Another Source is Not** 22 **Grounds To Quash a Subpoena or Refuse Production.**

23 Despite Ceridian’s contention otherwise, “nothing in the Federal Rules
 24 of Civil Procedure requires a litigant to rely solely on discovery obtained from an
 25 adversary instead of utilizing subpoenas.” *State Farm Mut. Auto. Ins. Co. v.*
 26 *Accurate Medical, P.C.*, 2007 WL 2993840, at *1 (E.D.N.Y. 2007). Moreover, “a
 27 person may not avoid a subpoena by saying that the evidence sought from him is
 28 obtainable from another.” *Covey Oil Co. v. Continental Oil Co.*, 340 F.2d 993, 998

(10th Cir. 1965) (overruled on other grounds); *State Farm*, 2007 WL 2993840, at *1 (same); *In re Bergeson*, 112 F.R.D. 692, 695 (D. Mont. 1986) (conclusory assertions that documents sought are available from others more economically “does not constitute a showing of unreasonableness or oppressiveness”); *see also Plant Genetic Sys., N.V. v. Northrup King Co., Inc.*, 6 F. Supp. 2d 859, 861-862 (E.D. Mo. 1998) (third party subpoena proper where information sought pertained to a central issue in the underlying claim, it was not burdensome in light of plaintiff’s diligent efforts to obtain the information from defendant, and the nonparty had signed protective order prohibiting disclosed information from being seen by plaintiffs’ counsel or nonparty’s competitors). Ceridian therefore cannot simply rely on its contention that Comdata has already produced some of this information to try to prevent UCLA from responding to the Subpoena.

B. UCLA Has Relevant Documents Not Already Produced By Comdata or Ceridian.

In its Motion, Ceridian so much as admits that *all* of documents called for by the UCLA Subpoena have not already been produced by Comdata (or Ceridian). Ceridian’s tell-tale phrases—“*to the extent that* the UCLA Subpoena ... seek[s] underlying transactional data” and “*much of this data has already been produced*”⁵⁹—correctly imply that there is in fact responsive transactional data that Comdata (and Ceridian) have not produced to date and that the Subpoena covers a broader spectrum of documents than just the transactional data.⁶⁰ Specifically, the transactional data provided by Comdata to date cuts off in April of 2009. The Index, on the other hand, is continually updated with current transactional data⁶¹ and

⁵⁹ Mot. at 12 (emphasis added).

⁶⁰ Ceridian also more or less concedes the relevance of this data. *See id.*

⁶¹ Exh. D at White Paper, p. 3 [UCLA Subpoena, Exhibit 1].

1 thus documents produced by UCLA in response to the Subpoena would contain
2 more recent transactional data *not already received* by Plaintiffs.

3 Furthermore, the representations made in the Index promotional
4 materials that *Ceridian* itself collects, maintains, and scrutinizes the transactional
5 data, *not Comdata*, call into question whether the information Comdata produced in
6 response to Plaintiffs' Request for Production on December 3, 2007 would be
7 identical to the information sought from UCLA in the Subpoena. *See* Mot. at 12-13.
8 To date, Ceridian itself has produced no documents in the Underlying Litigation.⁶²

9 Ceridian's assertions that this information can be obtained from another
10 source are both irrelevant and meritless. The Court should deny Ceridian's Motion
11 to Quash this Subpoena.

12 Conclusion

13 Despite Ceridian's assertions otherwise, the documents requested by the
14 Subpoena are likely to lead to admissible evidence in support of Plaintiffs' claims
15 that Ceridian, Comdata, and other defendants engaged in anti-competitive activities
16 that resulted in Comdata (with the active participation of Ceridian regarding certain
17 aspects of the conduct) charging Plaintiffs artificially inflated transaction fees for
18 their diesel fuel transactions. Furthermore, the Subpoena seeks documents
19 pertaining to Plaintiffs' claim that Ceridian was directly involved in the Fleet Card
20 market. The raw data requested by the Subpoena will also assist Plaintiffs' damage
21 calculations.

22
23 ⁶² Notably, to date Ceridian has yet to produce a single document in response to:
24 (1) Plaintiffs' First Request For Production Of Documents To Defendant Ceridian
25 Corporation, served January 5, 2010; (2) Plaintiffs' Second Request For Production
26 Of Documents To Defendant Ceridian Corporation, served March 4, 2010; and
27 (3) Judge Perkin's March 31, 2010 Order granting Plaintiffs' motion to compel
28 Ceridian Corporation to comply with the subpoena and produce responsive
electronically stored information (Dkt. No. 204, Case No. 07-1078, U.S. Dist. Ct.,
E.D. Pa.). Harvey Dec. at ¶ 20; Exh. L [Judge Perkin's March 31, 2010 Order].

1 Ceridian has provided no evidence of how exactly this Subpoena will pose an
2 undue burden on UCLA and has omitted any mention of the Protective Order in
3 place that will prevent any responsive information from being disclosed to UCLA's
4 or Ceridian's competitors. Without any evidence or burden or competitive harm
5 resulting from this Subpoena, Ceridian resorts to trying show that the information
6 called for by the Subpoena is duplicative of information already produced by
7 Comdata. However, Comdata has already admitted that this information is indeed
8 different and regardless the law is clear that party cannot refuse to produce
9 information on the sole basis that it is available from another source. Ceridian also
10 suffers, in advancing its motion, from failed standing and a procedural violation of
11 Local Rules.

12 Plaintiffs therefore respectfully request that the Court deny Ceridian's Motion
13 to Quash, thereby allowing UCLA to produce documents in response.

14
15 DATED: May 14, 2010

QUINN EMANUEL URQUHART &
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16
17
18 By s/Dale H. Oliver

19 Dale H. Oliver

20 Attorneys for Universal Delaware, Inc., et
21 al.